amended his declaration by inserting the names of the beneficiaries. *Held*, that the statutory bar cannot be interposed. *Love* v. *Southern Ry. Co.*, 65 S. W. Rep. 475 (Tenn., Sup. Ct.).

Whether amendments are to be allowed or refused is almost wholly within the discretion of the court. *Chirac* v. *Reinsicker*, 11 Wheat. (U. S.) 280. But modern authorities greatly favor allowing them to prevent failure of justice. *Stebbins* v. *Lancashire Ins. Co.*, 59 N. H. 143. The fact that the statutory period has expired while the suit is pending is regarded as a strong reason for allowing the amendment. *Sanger* v. *Newton*, 134 Mass. 308. In such cases the running of the statute is arrested at the date of filling the original pleading, unless the amendment sets up a new cause of action or introduces new parties. *Blanchard* v. *Lake Shore, etc., Ry. Co.*, 126 Ill. 416; *Hills* v. *Ludwig*, 46 Oh. St. 373; *Flatley* v. *Memphis, etc., Ry. Co.*, 9 Heisk. (Tenn.) 230. The amendment in the principal case does not introduce new parties, as the action is continued in the name of the administrator, the heirs at law being named only as beneficiaries. Nor does it seem that in any real sense a new cause of action is set up. The amendment cures a purely formal defect, and both declarations are obviously based on the same cause of action. The case reaches a very desirable result and is supported by good authority. *South Carolina Ry. Co.* v. *Nix*, 68 Ga. 572; *Huntingdon, etc., Ry. Co.* v. *Decker*, 84 Pa. St. 419. There is, however, some authority the other way. *Atlanta, etc., Ry. Co.* v. *Hooper*, 92 Fed. Rep. 820.

STATUTE OF LIMITATIONS — APPLICATION TO BILL TO REMOVE CLOUD ON TITLE. — Neb. Code, § 16, enacts that "An action for relief not hereinbefore provided for, can only be brought within four years after the cause of action shall have accrued." § 2 abolishes the distinction between actions at law and suits in equity. *Held*, that the statute constitutes no defence to a suit to remove a cloud on title. *Batty* v. *City of Hastings*, 88 N. W. Rep. 139 (Neb.).

Statutes of limitations formerly applied expressly only to actions at law, but the spirit of these statutes is followed in equity, and at the present day they often in terms include equitable suits. WOOD, LIM., § 58. While at law a cause of action must be a breach of legal duty, in equity a suit may be brought to procure a deserved benefit or to relieve from hardship, without any previous wrongful act on the part of the defendant. The question then arises whether the causes of action in suits of the latter class are within the statutes. The authority, though scanty, seems uniformly opposed to such a view. *Schoener* v. *Lissauer*, 107 N. Y. 111. The reasons on which the statutes are based have very little application to cases of this class, and the fact that the outstanding claim is an old one makes its cancellation no less just and desirable. In the principal case therefore the decision, though not founded on a literal construction, seems not to conflict with the intention of the statute. The plaintiff may of course still be barred, if guilty of laches.

BOOKS AND PERIODICALS.

INSANITY IN RELATION TO CONTRACTS. — It is the law of England that an insane person is liable upon his contracts as if sane unless, in addition to his own insanity, he proves that the other party knew of his condition. *Imperial Loan Co.* v. *Stone*, [1892] 1 Q. B. 599. This decision, though previously assailed in England, finds support in a recently published article. *Lunacy in Relation to Contract, Tort, and Crime*, by Rankine Wilson, 18 L. Quart. Rev. 21 (Jan., 1902). In Mr. Wilson's view the case decides merely that insanity shall not be a defence unless the "party alleging it was so insane as not to be capable of understanding what he was about," and then goes on to establish a test of such insanity which shall be "whether the other party can be affected with knowledge." It requires no little ingenuity to find in the language of the decision any indication that such was the meaning of the court. ANSON, CONTS., 9th ed., 125. The defendant, by hypothesis, having already proved that he was incapable of understanding what he was about, no test by means of which that

fact might be established could possibly be needed. Admitting, however, that the language is capable of this construction, the change is one of form merely and the practical result remains the same. The sole issue should be whether the person alleging insanity was capable of understanding the contractual act. In determining that question it is by no means apparent how the knowledge of one party affords, as is contended, a test which is both absolute and practically unerring. Applied to the case of contracts made by insane persons who are to all appearances sane, or to agreements entered into by correspondence, this test fails entirely to aid in ascertaining the truth. The incapacity of the defendant to perform a contractual act remains the same, however ignorant of it the plaintiff may be. Nor is an inquiry into the mental condition of one person in the least aided by evidence as to the state of mind of another. When it is considered that the heavy burden of proving knowledge is upon the insane, the doctrine appears to be a return toward the harsh rule of the common law, that no man can "stultify himself" by pleading his own insanity.

Mr. Wilson's position finds little support among modern authorities. *Edwards* v. *Davenport*, 20 Fed. Rep. 756; *Seaver* v. *Phelps*, 11 Pick. (Mass.) 304. In the cases relied upon by the court in *Imperial Loan Co.* v. *Stone*, *supra*, the insane person had derived some benefit from the contract, and in such cases the law justly implies a contract to pay. *Baxter* v. *Earl of Portsmouth*, 5 B. & C. 170; *Molton* v. *Camroux*, L. R. 2 Ex. 487. Knowledge of insanity then becomes material as a defence since a remedy in its nature equitable should not be allowed to one open to the suspicion of having imposed upon an insane person. These decisions, however, offer no support for the sweeping rule contended for which makes no distinction between executed and executory contracts. The cases in the United States which seem at first sight to accord with Mr. Wilson's view will, upon examination, generally be found to fall within the class where the relief sought is in essence *quasi*-contractual. *Matthiessen, etc., Co.* v. *McMahon's Adm'r*, 38 N. J. Law 536.

CONDITIONAL PAYMENT BY CHECK. — The effect of a creditor's acceptance of a check sent expressly "in full satisfaction" of a larger claim has been the subject of some difference of opinion. The English courts leave it to the jury to decide whether the creditor accepted the check in final settlement or merely as a payment on account. *Day* v. *McLea*, 22 Q. B. D. 610. Numerous American decisions, on the contrary, hold as matter of law that acceptance of such a check discharges the entire claim. *Logan* v. *Davidson*, 18 N. Y. App. Div. 353. A brief discussion of the question appears in a recent article, in which, however, the author has done little more than to re-state the present English law. *Cheques in Settlement*, by G. Pitt-Lewis, 112 L. T. (London) 49, Nov. 16, 1901. In jurisdictions where a liquidated claim cannot be discharged by a smaller payment, either in *specie* or by check, the question obviously is confined to disputed claims. *Meyer* v. *Green*, 21 Ind. App. 138. But in all other jurisdictions it concerns both unliquidated and liquidated claims; for these jurisdictions either hold broadly that a smaller payment, whether in *specie* or by check, may operate in full satisfaction, or else, with the English courts, they concede that payment by check may have such effect, though payment in *specie* may not. *Clayton* v. *Clark*, 74 Miss. 499; *Sibree* v. *Tripp*, 15 M. & W. 23.

The English view, that the effect of acceptance is a question of fact for the jury, seems untenable. When a debtor makes a conditional payment by check, the creditor may honorably take one of three courses: he may accept the check in full discharge; he may passively retain it, without cashing or negotiating it; or he may return it. Unless he violate the express condition on which it was sent, he cannot apply it merely on account. He should either refrain from applying the check at all or conform to the terms imposed by the debtor; he cannot rightly substitute terms of his own. "The use of the check is *ipso facto* an acceptance of the condition." *Nassoiy* v. *Tomlinson*, 148 N. Y. 326.